

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Petition of)	
)	
MICHIGAN ACCESS, INC.)	
)	
Emergency Petition for Waiver of the)	
Commission's Rules to Designate Michigan)	
Access an Incumbent Local Exchange Carrier in)	CC Docket No. 96-45
Two Unserved Areas in Northeast Michigan)	
)	
Petition for Waivers of the Commission's Rules to)	
Allow New Local Exchange Carrier to Participate)	
in NECA Tariffs and Pools and Obtain)	
Accelerated USF Support)	

MICHIGAN ACCESS, INC.

**EMERGENCY PETITION FOR WAIVER OF THE COMMISSION'S RULES
TO DESIGNATE MICHIGAN ACCESS AN INCUMBENT LOCAL EXCHANGE
CARRIER IN TWO UNSERVED AREAS IN NORTHEAST MICHIGAN**

**PETITION FOR WAIVERS OF THE COMMISSION'S RULES TO PERMIT NEW
LOCAL EXCHANGE CARRIER TO PARTICIPATE IN NECA TARIFFS AND
POOLS AND TO OBTAIN ACCELERATED USF SUPPORT**

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I. Introduction

Michigan Access, Inc. ("Michigan Access"), by its attorney, and pursuant to section 1.3 of the Commission's rules,¹ hereby petitions for an emergency waiver of the Commission's rules to permit Michigan Access to be designated an incumbent local exchange carrier ("incumbent LEC") in two remote, rural exchanges in Northeast Michigan. Expedited review by the FCC is critical to enable Michigan Access to obtain telephone numbers to serve the residents in these communities immediately. In the absence of incumbent LEC status for these areas, Michigan Access cannot obtain from

¹ See 47 C.F.R. § 1.3.

the Michigan Public Service Commission (“MPSC”) the telephone numbers it needs in order to serve these customers.

Pursuant to the section 1.3 of the Commission’s rules, Michigan Access further requests that the Commission waive its rules to permit Michigan Access to become a member of the National Exchange Carrier Association (“NECA”) and participate in NECA tariffs and pools, and to begin receiving high-cost Universal Service Fund (“USF”) support in a timely manner. Specifically, Michigan Access requests the following:

- (1) Waivers of the term “telephone company” as defined in section 69.2(hh), and as used in section 69.601 of the Commission’s rules, and of the annual election filing deadline in section 69.3(e)(6) to permit Michigan Access to become a member of NECA and participate immediately in NECA pools and tariffs;²
- (2) A declaratory ruling that a waiver of the definition of “study area” in the Appendix-Glossary of Part 36 of the Commission’s rules is not necessary;
- (3) Waiver of the historical cost requirements set forth in sections 36.611 and 36.612 of the Commission’s rules to allow Michigan Access to receive high-cost loop support based on its forecasted or estimated costs;³ and
- (4) In order to permit Michigan Access to receive high-cost fund (“HCF”) disbursements in a timely manner, Michigan Access further seeks:

² 47 C.F.R. §§ 69.2(hh), 69.601.

³ *Id.* §§ 36.611, 36.612.

- (a) Waiver of the state certification deadlines set forth in section 54.314(d);⁴ and
- (b) Waiver of the data filing deadlines set forth in sections 54.301(b) and 54.903(a).⁵

In the event that any additional waivers are necessary to designate Michigan Access an incumbent LEC, and to expedite Michigan Access' receipt of USF support and participation in NECA pools and tariffs, Michigan Access requests that such waivers be considered and granted by the Commission on its own motion. If some of the waivers requested herein will require substantially more time for the Commission to review than others, Michigan Access requests that its Emergency Petition, and other waiver request be severed, so that the Commission can rule on those issues requiring less time, while review of the other requests is pending.

II. Background

Michigan Access is a privately held corporation incorporated in the State of Michigan.⁶ The company is headquartered in Rose City, Michigan.

On June 27, 2006, the Michigan Public Service Commission ("MPSC") granted Michigan Access a temporary license to provide basic local exchange service in certain local access and transport areas ("LATAs").⁷ Subsequently, on August 22, 2006, the

⁴ *Id.* § 54.314(d).

⁵ *Id.* §§ 54.301(d), 54.903(a).

⁶ Michigan Access is affiliated with Custom Software, Inc. d/b/a M33 Access, which is currently registered with the MPSC as a competitive access provider ("CAP"). *See also* Letter to Marlene H. Dortch, Secretary, FCC, from Audrey Glenn, Counsel to Michigan Access, Inc. and Custom Software, Inc. d/b/a M33 Access, CC Docket No. 96-45 (filed Sept. 18, 2009) (providing detailed history, background and information regarding Michigan Access and M33 Access).

⁷ *In the Matter of the Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896, Order (Michigan PSC Jun. 27, 2006).

MPSC granted Michigan Access' application to provide basic local exchange services throughout the State of Michigan.⁸ Michigan Access offers services either through its own facilities (including a wireless communications network), the lease of unbundled network elements ("UNEs"), or resale of other carriers' services.

On September 11, 2009, Michigan Access filed a request with the MPSC for designation as an eligible telecommunications carrier ("ETC") throughout its licensed service area pursuant to section 214(e)(2) of the Act.⁹ Michigan Access expects the MPSC to grant ETC designation in the near future.

Michigan Access has begun the process of providing basic telephone exchange service to residents in the northeast part of the State of Michigan. The communities to be served by Michigan Access have been named the Kirtland and Red Dog exchanges.¹⁰ The Kirtland exchange is located in Ogemaw and Oscoda counties. The Red Dog exchange is located in Oscoda County. Michigan Access is licensed to provide local exchange services throughout the state of Michigan, and has filed appropriate tariffs to serve these previously unserved communities. On September 28, 2009, the Ogemaw County Road Commission approved Michigan Access' permit to begin construction in Ogemaw County, and over the next few days, Michigan Access will install underground

⁸ *In the Matter of the Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896, Order (Aug. 22, 2006). Michigan Access also is registered with the MPSC as a toll reseller. In addition, Michigan Access is properly registered with the FCC to provide interstate telecommunications services under 47 C.F.R. § 64.1195.

⁹ *Application of Michigan Access, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Michigan PSC Case No. U-16085 (filed Sept. 11, 2009).

¹⁰ The exchange maps and legal descriptions of these areas are attached hereto as Attachment 1.

copper loops.¹¹ Michigan Access estimates that it will be operationally ready to serve customers in these areas within 45 days.

The Kirtland and Red Dog exchanges are remote, rural areas with a very low residential population. The Kirtland and Red Dog exchanges are located approximately 30 miles and 45 miles, respectively, from the nearest hospital and commercial area.¹² Currently, there are no copper or fiber lines extending to these communities, and the closest cellular tower is several miles away. As a consequence, neither wireline nor wireless telephone services are available to the citizens residing within these communities. In fact, the residents of these communities do not have access to any utilities, including electrical power. Because no utilities have been extended to these areas to date, no addresses have been assigned to the houses within these communities.

Although these areas are scarcely-populated, the few citizens that reside within these communities desperately need basic local exchange service. During a recent visit to a home in the Kirtland exchange, Michigan Access learned that the elderly man who lives there has previously suffered two heart attacks. At another location within this exchange, Michigan Access met an elderly woman who explained that Michigan Access was the only visible sign of any progress towards telephone services in the area in decades. The woman literally pleaded with the company to offer telephone service as soon as possible. These are just two examples. Yet, one can assume that all persons

¹¹ See Ogemaw County Road Commission, Application and Permit to Construct, Operate, Use and/or Maintain Within the Right-of-Way of; or to Close, a County Road, Permit No. 2009-122, Application No. 1550 (Issued Sept. 28, 2009), attached hereto as Attachment 2.

¹² The houses in these communities have not yet been assigned addresses. Therefore, the distance from the houses to the nearest commercial centers, including hospitals, is an estimate based on mapping from the nearest address in the area to the nearest commercial center.

residing in remote, rural areas assume substantial risks due to the inability to contact someone in the event of an emergency.

After personally speaking with residents in the Kirtland exchange, and upon visual inspection of the Red Dog exchange, Michigan Access is more committed now than ever to ensuring telephone service to these communities. Michigan Access has already begun the process of initiating service to these residents. The company is licensed to provide telephone exchange service throughout the state of Michigan, and has filed all appropriate tariffs. In addition, the company has been approved to begin construction in Ogemaw County, and will begin installing copper loops within the next few days. Michigan Access estimates that it will be operationally ready to serve these communities in 45 days, and will be capable of serving all unassigned residents in these exchanges within one year of receiving funding from the USF.

III. Good Cause Exists to Grant the Requested Waivers

Pursuant to section 1.3 of the Commission's rules, the Commission may waive its rules for good cause shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ As interpreted by the courts, waiver of the Commission's rules is appropriate if

¹³ *In the Matter of McE L Enterprises, Inc. d/b/a Skyline Telephone Company Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, Order (rel. Apr. 12, 2004) ("*Skyline Order*"), at ¶ 7.

¹⁴ *Id.*

¹⁵ *Id.*

“special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.”¹⁶

A. Expedited Review by the FCC is Critical to Enable Customers in Rural Areas to Receive Telephone Service Immediately

Although Michigan Access is ready to serve the customers in the Kirtland and Red Dog exchanges, there is one significant factor that currently prevents the company from doing so: telephone numbers. The MPSC will issue telephone numbers only to an incumbent LEC.¹⁷ Because Michigan Access is not an incumbent LEC for these areas, the company cannot obtain telephone numbers from the MPSC in order to provide telephone service to the customers who currently do not have any access to any telecommunications services.

The designation of incumbent LEC status is a decision exclusively reserved to the FCC. Thus, at this time, unless the FCC issues a decision immediately regarding incumbent LEC status in these two unassigned areas, the MPSC will not issue telephone numbers and the customers will remain without telephone service. FCC inaction on this matter will lead to the anomalous result where communities that have been denied telephone service for over 100 years are finally capable of receiving such service; however, due solely to the fact that the regulatory system will not permit the

¹⁶ *In the Matter of Wilderness Valley Telephone Company, Inc Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission's Rules*, AAD 96-99, Order on Reconsideration (Com. Car. Bur. Mar. 31, 1998), at ¶ 6 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WATT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3).

¹⁷ See ATIS, *Central Office Code (NXX) Assignment Guidelines (COCAG)*, ATIS-0300051 (Sept. 18, 2009). (“COCAG Guidelines”), at 10. The Michigan PSC cited the COCAG Guidelines to support its position regarding the provision of telephone numbers to incumbent LECs only. The COCAG Guidelines provide that “[a]n initial code assignment will be based on a unique *rate center* consistent with regulatory restriction.” *Id.* at 10 (citations omitted). The guidelines define the term “rate center” as, *inter alia*, “a uniquely defined point...located within an *exchange area*.” *Id.* at 54. The term “exchange area” is defined as “[a] geographic area tariffed by a state utilities commission and served by an *incumbent [LEC]*.” *Id.* at 48. Michigan Access notes that these same guidelines provide that “[t]he guidelines should provide the greatest latitude in the provision of telecommunications services while effectively managing a finite resource.” *Id.* at 7.

assignment of telephone numbers, the citizens living in these areas, nevertheless, remain without service. Such a result is unjust, unreasonable, and contrary to the public interest. To ensure that the residents of these communities can obtain telephone service now, Michigan Access urges the FCC to issue a decision immediately regarding incumbent LEC designation for these areas.

Michigan Access acknowledges that Allband and Osirus have each filed a prior petition also seeking to be named the incumbent carrier for a portion of these areas.¹⁸ Michigan Access urges the Commission to designate Michigan Access an incumbent LEC for the Kirtland and Red Dog exchanges, irrespective of Allband and Osirus' previously filed petitions. Importantly, both Allband and Osirus have explicitly stated in this record that their plans to serve these areas are on hold.¹⁹ Michigan Access, by contrast, is committed to serving these areas under any circumstances, and in fact, will be operationally ready to serve these customers within 45 days.

The only factor preventing Michigan Access' service to these areas is telephone numbers. And, Michigan Access has been informed by the MPSC that the only way to obtain telephone numbers for these areas is to be designated an incumbent LEC – a

¹⁸ See *In re Petition of Allband Communications Cooperative for Waiver of Sections 69.2(bb) and 69.601 of the Commission's Rules to Allow New Local Exchange Carrier to Participate in National Exchange Carrier Association Tariffs and Pools*, CC Docket No. 96-45 (filed Sept. 5, 2006); *In the Matter of Osirus Communications, Inc. Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45 (filed Oct. 2, 2007).

¹⁹ See Letter to Michael Copps, Interim FCC Chairman, FCC, from Ron K. Siegel, General Manager and John M. Reigle, President, Allband Communications Cooperative, CC Docket No. 96-45 (dated May 11, 2009), at 2 (stating that it "cannot proceed without a decision from the FCC."); Letter to Marlene H. Dortch, Secretary, FCC, from Tom Karalis, Fred Williamson & Associates, Inc., CC Docket No. 96-45 (dated March 25, 2009), Attachment at p. 9 ("without knowing the outcome of this Petition, any further plans for expansion to meet the needs of customers in unserved areas will have to be put on hold"); Comments of Allband Communications Cooperative in Opposition to Petition for Waivers and Allband Request for Clarification, CC Docket No. 96-45 (filed Jan. 3, 2008) (stating that FCC delay "will deny Allband the opportunity to move forward with the provisioning of service to these unserved areas..."); Letter to Gary Siegel, FCC, from Michael R. Witulski (dated May 21, 2008), at 1 ("Osirus has temporarily placed its work on this project on hold pending the Commission's resolution of this matter.").

decision that rests solely with the FCC. Thus, the FCC can resolve this matter, thereby permitting these customers to receive telephone service immediately, by designating Michigan Access an incumbent LEC for the Kirtland and Red Dog exchanges.

Designation of incumbent LEC status in favor of Michigan Access will permit the MPSC to issue telephone numbers to Michigan Access so that the customers living in these communities can receive telephone service in the near future.

On the basis of the foregoing, Michigan Access respectfully requests that the FCC waive its rules to permit Michigan Access to be designated an incumbent LEC for the Kirtland and Red Dog exchanges.

B. FCC Waivers Are Necessary to Enable Michigan Access to Continue Providing Telephone Service to Previously Unserved Rural Areas While Maintaining Affordable Rates

Michigan Access will incur significant expenses and costs to serve residents of the Kirtland and Red Dog exchanges. Yet, the company believes that such expenditures are warranted because Michigan Access is the only reasonable hope these citizens have for obtaining telephone service in the foreseeable future. After personally speaking with residents in the Kirtland exchange, who explained how desperately they need and desire telephone service, not providing service in these areas simply is not an option. Putting aside the commercial propriety of such a decision, Michigan Access is socially and morally committed to ensuring that these citizens have access to basic and essential telecommunications services.

While Michigan Access remains committed to serving residents of the Kirtland and Red Dog exchanges under any circumstances, the company also intends to seek support from the federal Universal Service Fund to ensure that it can continue offering

telecommunications service at affordable rates. The Kirtland and Red Dog exchanges are remote, sparsely-populated, rural areas, which clearly qualify for high-cost support under the FCC’s universal service support funding requirements. Nevertheless, because these areas are unassigned, and because Michigan Access is not designated as an incumbent LEC in these areas, the company’s status relative to such support remains unclear. For this reason, Michigan Access seeks waivers of the relevant FCC rules to assist the company in determining the full extent of universal service funding available to serve these areas. Support from the federal universal service fund will enable Michigan Access to continue serving these high-cost, rural areas, while at the same time ensuring that its rates remain affordable.

A. Waiver of “Telephone Company” Definition

In order to be a member of NECA, and to participate in its tariff and pools, a carrier must be a “telephone company” as defined in Part 69 of the Commission’s rules.²⁰ Section 69.2(hh) of the Commission’s rules defines a “telephone company” as an incumbent LEC as defined in section 251(h)(1) of the Act.²¹ Section 251(h)(1), in turn, defines “incumbent local exchange carrier” as a carrier that provided telephone exchange service and was a member of NECA as of the date of enactment of the 1996 Act.²² The term also includes any carrier that, after the 1996 Act, became a successor or assign to an incumbent LEC.²³ Michigan Access came into existence after the 1996 Act, and is not a successor or assign of an incumbent LEC. Thus, the company is not an

²⁰ *Skyline Order* at ¶ 24.

²¹ *Id.*; 47 C.F.R. § 69.2(hh).

²² *Id.*; 47 U.S.C. § 251(h)(1).

²³ *Id.*

“incumbent local exchange carrier,” and therefore, is not “telephone company” for purposes of section 69.2(hh) of the Commission’s rules.

For the reasons set forth herein, good cause exists to warrant a waiver of the definition of “telephone company” in section 69.2(hh). Participation in NECA will allow Michigan Access to avoid the costs of filing and maintaining its own company-specific interstate tariffs.²⁴ As previously noted, there are very few customers residing in the Kirtland and Red Dog exchanges. Thus, the costs of preparing company-specific tariffs could be excessive.²⁵ In addition, because Michigan Access has made large capital investments to provide service, its company-specific rates have the potential to be extremely high.²⁶ In view of the foregoing, and similar to the conclusion reached by the Commission in the *Skyline Order*, it is in the public interest to permit Michigan Access and its customers to benefit from the cost savings and lower rates available through participation in NECA.²⁷

In the *Skyline Order*, the Commission recognized that, in revising its rules to require that telephone companies be incumbent LECs to participate in NECA tariffs and pools, and to file data pursuant to section 36.611, it did not specifically provide for companies like Michigan Access that come into existence after the enactment of the 1996 Act.²⁸ The Commission further explained that “[t]he purpose of the incumbent LEC restrictions in Parts 36, 54, and 69 is to distinguish competitive LECs from

²⁴ *Skyline Order* at ¶ 26.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at ¶ 27.

incumbent LECs for purposes of calculating access charges and universal service support, not to impose interconnection requirements.”²⁹ Upon noting that Skyline Telephone Company would be the sole provider of service in its area, and that the company qualified for the rural telephone company exemption set forth in section 251(c), the Commission found that the underlying incumbent LEC requirements in Parts 36, 54, and 69 of the Commission’s rules were not applicable to Skyline Telephone.³⁰ Thus, the Commission waived its rules to permit Skyline Telephone to participate in NECA pools and tariffs and receive high-cost universal service support.

Like the telephone company in the *Skyline Order*, Michigan Access is the sole provider in the unassigned areas, and thus is not a competitive LEC for these areas.³¹ Moreover, as a rural telephone company, Michigan Access is exempt from the interconnection requirements in section 251(c), until other requirements are satisfied.³² Therefore, consistent with the Commission’s conclusion in *Skyline*, the purposes underlying the incumbent LEC requirements in Parts 36, 54, and 69 of the Commission’s rules are not applicable to Michigan Access. Under these circumstances, waiver is appropriate to permit Michigan Access to participate in NECA pools and tariffs and receive high-cost universal service support.

²⁹ *Skyline Order* at ¶ 27.

³⁰ *Id.* at ¶ 28. Pursuant to section 251(f), the interconnection requirements set forth in section 251(c) do not apply to a “rural telephone company” until: (1) such company has received a bona fide request for interconnection, services, or network elements, and (2) the State commission determines...that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of [the Act].” 47 U.S.C. § 251(f).

³¹ *Id.*

³² *See supra* note 30 and accompanying text; 47 C.F.R. § 251(c); *id.* at ¶ 27.

For all of the foregoing reasons, Michigan Access requests that the Commission waive the definition of “telephone company” in section 69.2(hh) of its rules, waive the incumbent LEC requirements of sections 36.611, 54.301, and 54.303 of its rules, and waive section 69.3(e)(6) of its rules to allow Michigan Access to participate promptly in NECA tariffs and pools and receive universal service support. Such waivers will permit Michigan Access to become a member of NECA and to participate in NECA pools and tariffs, but will not affect Michigan Access’s obligations under section 251 of the Act.

B. Waiver of Sections 36.611 and 36.612

The amount of high-cost loop support a rural company receives under the Commission’s rules is based on the relationship of its study area average cost per loop to the nationwide average cost per loop.³³ Pursuant to section 36.611 of the Commission’s rules, on July 31 of each year, incumbent LECs file the preceding year’s loop cost data with NECA.³⁴ NECA compiles and analyzes these data to determine the average cost per loop for each incumbent LEC study area as well as the nationwide average cost per loop, adjusted by the indexed cap on the high-cost fund.³⁵ Carriers generally do not receive high-cost loop support based on these data until the beginning of the second calendar year after the costs are incurred.³⁶ As a result, carriers without

³³ See *In the Matter of Mescalero Apache Telecom, Inc., GTE Southwest Incorporates, and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission’s Rules*, CC Docket No. 96-45, Order (Common Carrier Bureau Jan. 18, 2001) (“*Mescalero Order*”), at ¶ 22.

³⁴ *Id.*

³⁵ *Id.* Each incumbent LEC’s high-cost loop support for the following year is based on the relationship between the incumbent LEC’s study area average cost per loop and the nationwide average cost per loop, as limited by the indexed cap. *Id.*

³⁶ *Id.* Cost data are not submitted by carriers until seven months after the end of a calendar year. In addition, NECA requires time to analyze the data and make the necessary nationwide calculations of support by determining the

historical data, such as newly-established carriers, must wait for up to two years before receiving any high-cost loop support payments.³⁷

On prior occasions, the Commission has found that a deviation from sections 36.611 and 36.612 was warranted in order to cover costs incurred by a carrier serving previously unserved areas.³⁸ The Commission has concluded that denying immediate high-cost loop support could have the unintended effect of discouraging service in unserved, remote areas, thereby frustrating the goal of promoting the provision of services at reasonable rates.³⁹ Because companies seeking to serve previously unserved areas make large capital investments to initiate services without immediate support, the Commission has noted that the company-specific rates would likely be extremely high.⁴⁰ Thus, the Commission has noted that such areas would have likely remained unserved if these carriers were unable to provide services.⁴¹

Michigan Access has initiated telephone service within remote, rural, and high-cost areas that currently do not have access to basic telephone service. Several residents, including at least two elderly persons with failing health, are without any access to any telephone service whatsoever. Michigan Access requests waiver of

nationwide average loop cost adjusted by the indexed cap. As a consequence, carriers do not receive high-cost loop support until the beginning of the second year after the costs are incurred. *Id.* at ¶ 23.

³⁷ Under section 36.612 of the rules, carriers can, however, update their data on a quarterly basis, and receive support earlier than the beginning of the second calendar year after incurring the costs. Section 36.612 allows carriers to update, on a quarterly basis, the calendar year cost data that they submit to NECA on July 31.

³⁸ See *Mescalero Order* at ¶¶ 22-30; *In the Matter of Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of Sections 36.611, 36.612, 54.301(b), 54.314(d), 54.903(a)(3), 69.2(bb) and 69.3(e)(6) of the Commission's Rules*, CC Docket No. 96-45, Order (CCB Dec. 20, 2005) (“*Adak Order*”); *Skyline Order* at ¶¶ 19-21.

³⁹ See *Mescalero Order* at ¶ 26; *Adak Order* at ¶¶ 7-10.

⁴⁰ *Adak Order* at ¶ 8.

⁴¹ *Id.*

sections 36.611 and 36.612 of the Commission's rules to enable it to receive high-cost loop support payments immediately upon obtaining ETC designation in Michigan.

The requested waivers will enable Michigan Access to extend reasonably-priced telecommunications services to previously unserved residential customers that are located in rural, remote, and high-cost areas. Michigan Access will be ready to serve its first customers in these areas in 45 days, and is committed to serving all unserved residences within these exchanges within the first year of receiving USF support. While it is difficult to determine accurately the number of persons living in these communities due to the sheer expanse of the land area, Michigan Access estimates that there are at least two dozen residents, all of whom are without telephone service. During its visits to these areas, Michigan Access determined that there are no telephone facilities available to serve these customers. Thus, in order to provide service to these areas, Michigan Access will have to install its own facilities and switches.

Because Michigan Access does not have historical data with which to calculate high-cost loop support, it seeks waivers to calculate high-cost loop support in the initial two years based on its projected costs per access line. Thereafter, Michigan Access will "true-up" on an annual basis to reconcile any difference between estimated and actual costs incurred.

On the basis of the foregoing, special circumstances warrant waivers of sections 36.611 and 36.612 of the Commission's rules. Michigan Access' primary goal is to address the complete lack of telecommunications services in the Kirtland and Red Dog exchanges. Denial of immediate high-cost loop support could have the unintended effect of discouraging Michigan Access's planned expansion of service to these areas,

thereby frustrating the Commission's goal of promoting the provision of telecommunications services at reasonable rates.

C. Waiver of Sections 54.301(b), 54.314(d) and 54.903(a)

Pursuant to section 54.314 of the Commission's rules, a state that desires a rural incumbent LEC within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative Company ("USAC").⁴² The certification must be filed by July 1 to receive support beginning in the last quarter of the calendar year and by October 1 of the preceding calendar year to receive support beginning in the first quarter of the subsequent calendar year.⁴³ Section 54.301(b) of the Commission's rules provides that incumbent LECs must file certain data with USAC by October 1 of each year to receive local switching support (LSS) and interstate common line support (ICLS) for the following calendar year. Section 54.903(a)(3) of the Commission's rules provides that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.⁴⁴ In addition, section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.⁴⁵

⁴² *Adak Order* at ¶ 11.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

The Commission has waived sections 54.301(b), 54.314(d) and 54.903(a) either on its own motion, or upon request, on prior occasions.⁴⁶ Consistent with its prior decisions and for the reasons set forth herein, good cause exists to grant Michigan Access these additional waivers to allow the company to be eligible to receive high-cost support upon obtaining ETC designation from the MPSC. Specifically, waiver of these deadlines will permit Michigan Access to begin receiving high-cost loop, local switching, and interstate common line support on the dates it would otherwise be entitled to receive such support. Similar to the Commission's conclusion in the *Allband Order*, these waivers serve the public interest in promoting universal service by helping to bring the benefits and conveniences of telecommunications to currently unserved areas.⁴⁷

D. Study Area Waiver

Michigan Access is not required to seek a waiver of the definition of “study area” in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area serving an unassigned area. A carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges. In the *Skyline Order*, the Commission clarified that a study area waiver is required where a company is seeking to create a new study area from within one or more existing study areas. A study area waiver is not required where: (1) a separately incorporated company is establishing a study area for a previously unassigned area; (2) a company is combining previously unassigned

⁴⁶ See *Adak Order* at ¶¶ 11-13; *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(bb) and 69.601 of the Commission's Rules*, WC Docket No. 05-174, Order (Com. Car. Bur. Aug. 11, 2005) (“*Allband Order*”).

⁴⁷ See *id.* at ¶ 8.

territory; with one of its existing areas in the same state; and (3) a holding company is consolidating study area in the same state.

Michigan Access' proposed study area has never been part of an existing study area. Moreover, the area has never been served by any licensed local exchange carrier or designated ETC. Michigan Access is a separately incorporated company establishing a study area for a previously unassigned area. On this basis, and consistent with the Commission's guidance in the *Skyline Order*, Michigan Access requests that the Commission issue a declaratory ruling that Michigan Access is not required to obtain a study area waiver for the Kirtland and Red Dog exchanges.

IV. Conclusion

Customers in the Kirtland and Red Dog need telephone services now. Michigan Access is prepared to provide such services, but is not able to do so due to the MPSC's position that it may issue telephone numbers only to an incumbent LEC. Because incumbent LEC designation is a decision reserved exclusively to the FCC, in the absence of a ruling from the FCC on this matter, citizens in the Kirtland and Red Dog exchanges will remain without telephone service – despite the fact that Michigan Access has already incurred the expense of providing, and is operationally ready to provide, such services. Michigan Access respectfully requests that the FCC issue immediately a decision designating Michigan Access as an incumbent LEC for the Kirtland and Red Dog exchanges so that the company can continue its plans to roll-out telephone services to these customers in the near future.

Michigan Access further requests that the Commission grant appropriate waivers to permit Michigan Access to receive accelerated USF support to serve these

areas. Granting the waivers requested herein will ensure administration of the Universal Service Fund in a manner consistent with the Commission's goal of assisting local exchange carriers in serving high-cost rural areas and maintaining affordable local service.

In the event any additional waivers are necessary to expedite Michigan Access's receipt of USF support and participation in NECA pools and tariffs, Michigan Access requests that such waivers be considered and granted on the Commission's own motion. To the extent that some of the waivers requested herein will require substantially more time for review than others, Michigan Access requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

Michigan Access, therefore, respectfully requests the following:

- (5) Waivers of the term "telephone company" as defined in section 69.2(hh), and as used in section 69.601 of the Commission's rules, and of the annual election filing deadline in section 69.3(e)(6) to permit Michigan Access to become a member of NECA and participate immediately in NECA pools and tariffs;⁴⁸
- (6) A declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of Part 36 of the Commission's rules is not necessary;

⁴⁸ 47 C.F.R. §§ 69.2(hh), 69.601.

- (7) Waiver of the historical cost requirements set forth in sections 36.611, 36.612 of the Commission's rules to allow Michigan Access to receive high-cost loop support based on its forecasted or estimated costs;⁴⁹ and
- (8) In order to permit Michigan Access to receive HCF disbursements in a timely manner, Michigan Access further seeks:
 - (a) Waiver of the state certification deadlines set forth in section 54.314(d);⁵⁰ and
 - (b) Waiver of the data filing deadlines set forth in sections 54.301(b) and 54.903(a).⁵¹

Respectfully submitted,

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⁴⁹ *Id.* §§ 36.611, 36.612.

⁵⁰ *Id.* §54.314(d).

⁵¹ *Id.* §§ 54.301(d), 54.903(a).